

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

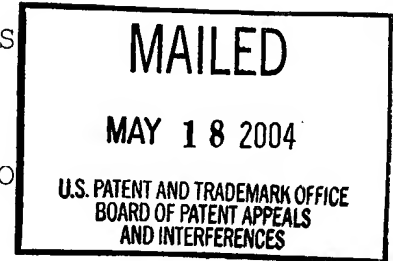
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte YONG CHE, TAKESHI MORIMOTO
and MANABU TSUSHIMA

Application No. 10/091,502

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER



This application was received at the Board of Patent Appeals and Interferences on April 29, 2004. A review of the application has reveals that the application is not be ready for docketing as an appeal. The matters requiring the examiner's attention prior to docketing are identified below.

REPLY BRIEF

On April 14, 2004, the examiner mailed a Response to Reply Brief acknowledging receipt of Appellant's Reply Brief, dated March 31, 2004. Accordingly, section 37 CFR 1.193 and the Manual

Application No. 10/091,502

of Patent Examining Procedure Examiner's (MPEP) 1208.03:

(b)(1) Appellant may file a reply brief to an examiner's answer within two months from the date of such examiner's answer...[t]he primary examiner must either acknowledge receipt and entry of the reply brief or withdraw the final rejection and reopen prosecution to respond to the reply brief....[t]he acknowledgment of receipt and entry of a reply brief under 37 CFR 1.193(b)(1) is an indication by the examiner that no further response by the examiner is deemed necessary.

A review of the Response to Reply Brief reveals that the examiner did not provide proper acknowledgment. The comments made by the examiner "...[t]he examiner respectfully disagrees with applicants' arguments that the Answer fails to answer the arguments made in the Appeal Brief..." is inappropriate.

Accordingly, it is

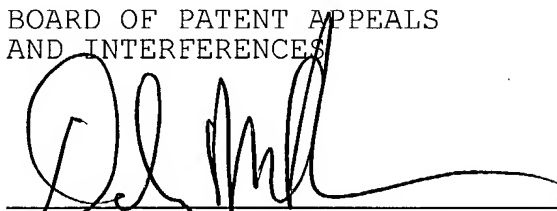
ORDERED that the application is returned to the examiner for:

- 1) vacating the Examiner's Response to the Reply Brief mailed April 14, 2004;
- 2) proper acknowledgment and appropriate consideration of the Reply Brief dated March 31, 2004, 2004; and
- 3) any further action as may be deemed appropriate.

Application No. 10/091,502

It is important that the Board of Patent Appeals and Interferences be informed promptly of any action affecting the appeal (i.e., abandonment, issue, reopening prosecution).

BOARD OF PATENT APPEALS
AND INTERFERENCES

A handwritten signature in black ink, appearing to read 'Dale M. Shaw', is written over a horizontal line.

DALE M. SHAW
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DMS/dpv
RA04-0548

Application No. 10/091,502

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